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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,649	04/19/2001	Gheorghe Cioca	2870/458	9217

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EXAMINER

KANTAMNENI, SHOBHA

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/838,649	Applicant(s) CIOCA ET AL.	
	Examiner Shobha Kantamneni	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,9-12,19,20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) NONE is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,9-12,19,20 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1617

DETAILED ACTION

Claims 1-22 are pending. The Amendment received on 03/07/05, wherein claims 1, and 2, have been amended, and claim 3 is cancelled.

The provisional obvious type double patenting rejection of Claims 1, 4, 5, 9, 11-12, 19-20, 22 as being unpatentable over claims 1-5 of copending Application No. 10/183,819 is MAINTAINED. Note: Applicant will make a terminal disclaimer, if necessary, in the event that allowable subject matter is indicated.

Applicant's Amendments that limits specific antimicrobial agents in claim 1 is sufficient to overcome the rejection of Claims 1-2, 4-5, 9-12, 19-20 and 22 under 35 U.S.C. 103(a) as being unpatentable over Cioca et al. (6,451,328) in view of Beerse et al. (6,217,887).

Applicant's cancellation of claim 3 is sufficient to overcome the rejection of Claim 3 under 35 U.S.C. 103(a) as being unpatentable over Cioca et al. (6,451,328) in view of Beerse et al. (6,217,887) as applied to claims 1-2, 4-5, 9-12, 19-20 and 22, and further in view of Stroud et al. (6,231,837).

Claims 1-2, 4-5, 9-12, 19-20, and 22 are Examined herein.

Applicant's amendment that inserts new limitation in the independent claim 1, necessitated the new ground(s) of rejection presented in this Office action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to

Art Unit: 1617

be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-5, 9-12, 19-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cioca et al. (6,451,328, of record) in view of Beerse et al. (6,217,887, of record), and further in view of Stroud et al. (6,231,837, of record).

The instant invention is directed to structured water comprising a cluster structure, wherein at least two antimicrobial agents of a silver ion and a potassium sorbate integrated within the cluster structure, and compositions and methods thereof.

Cioca et al. teach a cosmetic or pharmaceutical composition comprising structured water having at least one biologically active agent, an antioxidant integrated within at least one cluster structure. The structured water comprises a combination of I and S water, wherein I water is characterized by a conductivity of about 500-3500, and a pH of about 2.0-4.0; and S water is characterized by a conductivity of about 600-2500, and a pH of about 10.0-12.0. See column 2, lines 17-20; column 10, lines 8-15. Cioca teaches that the antioxidant is integrated in a cluster structure of structured water by feeding a solution of unstructured feed water containing the antioxidant through a device for producing structured water i.e the process used is same as instant invention. See column 3, lines 3-10, Example I, column 7. Examples of suitable antioxidants include, ginkgo biboba, beta carotene, green tea, ascorbic acid and derivatives thereof, carnosic acid, BHT and BHA. See column 5, lines 49-53. Cioca discloses a method of reducing

Art Unit: 1617

free radicals from the skin and the skin surface by topically applying to the skin the compositions of the structured water. See column 3, lines 15-20. Cioca teaches that the compositions of structured water having the antioxidant in its cluster structure can be used in skin care products, such as cleansers, toners, moisturizers and in makeup products such as lipsticks and glosses, foundations etc. See column 6, lines 30-35. Cioca further teaches that the structured water can contain within its cluster structure, moisturizing actives, agents used to treat age spots, keratoses, as well as analgesics, anesthetics, anti-acne agents, antibacterials, antiyeast etc. See column 6, lines 59-67. It also taught that the presence of the antioxidant within the cluster structure, has a stabilizing effect on the antioxidant, and the antioxidant activity inherent to structured water is enhanced. See abstract.

Cioca et al. do not expressly teach silver ion and potassium sorbate as biologically active agents, antimicrobials integrated within cluster structure.

Beerse et al. teach leave-on antimicrobial compositions which provide improved immediate germ reduction. Silver is a known active antimicrobial agent according to Beerse. See Col. 7, lines 54-67.

Stroud et al. teach cosmetic compositions. Potassium sorbate is disclosed as an antibacterial agent in cosmetic compositions. See Col. 18, lines 43-53.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ silver as an antimicrobial in the composition of Cioca et al. and integrate within the cluster structure of structured water because

- 1) Cioca teaches that the activity of biologically active agents can be enhanced

Art Unit: 1617

when combined with structured water 2) silver is a well-known antimicrobial agent; thus, one of skill in the art would have been motivated to combine the silver and structured water because of the expectation of achieving a beneficial antimicrobial effects for a topical cosmetic composition taught by Cioca.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ potassium sorbate as an antimicrobial in the composition of Cioca et al. and integrate within cluster structure of structured water containing silver ion because 1) Cioca et al. teach that the activity of biologically active agents, can be enhanced when integrated within the cluster structure of structured water 2) potassium sorbate is a well known biologically active agent. Thus, one of ordinary skill in the art would have been motivated to combine the potassium sorbate, Silver ion and structured water because of the expectation of achieving a topical cosmetic composition that is potent towards bacteria.

Regarding inherent properties recited in claims 19, 21-22 herein it has been held that a compound and its properties are inseparable (*In re Papesch*), and since the combination of references teach the cosmetic composition of the instant claims, the cosmetic composition must have the property of ceasing or retarding the growth of bacteria and thus preserve the cosmetic composition.

Response to Arguments

Applicant argues that "The addition of active agents to structured water as taught in the '855 reference is different from the integration of antimicrobial agents within the cluster structure of structured water as described

Art Unit: 1617

in the present invention both with respect to the starting materials and the product and the data in the Declaration under 37 C.F.R. 1.132 by Mirela Ionita Manzatu ("the Manzatu Declaration") demonstrates the difference between the two." This argument is not persuasive. The examiner respectfully points out that in the Previous Office Action mailed on 12/06/2004, the '855 reference in the 35 USC 103 rejection is Not cited as prior art, thus the argument is Not considered to be relevant to this rejection. The examiner would further like to point out that 1) product obtained by addition of active agents to structured water as taught in the '855 reference will result in a product which will have at least some amount of antimicrobial agent integrated within the cluster structure of structured water, 2) if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period, will expire on the date the advisory

Art Unit: 1617


action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shobha Kantamneni whose telephone number is 571-272-2930. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shobha Kantamneni, Ph.D
Patent Examiner
Art Unit: 1617.


SHAOJIA A. JIANG, PH.D.
PRIMARY EXAMINER